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William R. Sweeney

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/729,968
Filing Date: December 09, 2003
Appellant(s): SWEENEY, WILLIAM R.

Shawn B. Cage
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/11/11 appealing from the Office action mailed 7/13/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1. Claims canceled: 2, 15, 17, 18, 26, 28, 29, 32, 28, 40, and 41
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1, 3-14, 16, 19-25, 27, 30, 31, 33-37, 39, 42-46
4. Claims allowed: None
5. Claims rejected: 1, 3-14, 16, 19-25, 27, 30, 31, 33-37, 39, 42-46
6. Claims on appeal: 1, 3-14, 16, 19-25, 27, 30, 31, 33-37, 39, 42-46

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-25, 27, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (US 5,933,813), as cited by applicant, and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1), and further in view of Schroeder et al (US 2003/0130883 A1).

As per claim 21, Teicher et al discloses:

A sales controller in communication with a retailer computing device and a manufacturer computing device, (col. 5, lines 34-54, sales controller represented by the POS bar code reader);

a sales device in communication with the retailer computing device and the sales controller, (col. 5, lines 34-54, sales device represented by the POS unit);

wherein the sales controller is configured to receive price determination parameters from the retailer computing device to calculate a retail price and implement a promotion, /and wherein the sales device is configured to receive the retail price from the sales controller (col. 5, lines 34-54, calculates new price, [0069], shows the price offered by the manufacturer computing device in the database depends on the specific retailer computing device, incorporating existing contractual arrangements regarding pricing);

Teicher et al does not specifically disclose implementing a promotion or wherein the sales controller is configured to audit improperly implemented promotions and send audit reports to the manufacturer computing device, however does disclose determining and displaying sales promotion prices in col. 1, lines 36-51, which suggests ultimately implementing promotions.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors. It therefore would be obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented

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promotions with the motivation of determining if and when products are taken on/off promotions.

Neither Teicher et al nor Failing, Jr. et al disclose wherein the promotion information includes a promotion schedule that is encrypted at the manufacturer computing device, and the sales controller decrypts the promotion schedule on a segment-by-segment basis such that only information from a current segment is decrypted. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Werner discloses this limitation in an analogous art for the purpose of showing that phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion information includes a promotion schedule that is encrypted at the manufacturer computing device, and the sales controller decrypts the promotion schedule on a segment-by-segment basis such that only information from a current segment is decrypted with the motivation of not decrypting encrypted scheduling data all at once.

Neither Teicher et al, nor Failing, Jr. et al nor Werner disclose wherein the sales controller is configured to receive promotion information from the manufacturer computing device, however, Schroeder et al discloses in [0056], a web interface allowing access to manufacturer computing device databases to provide alternate promotions.

It therefore would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the sales controller is configured to receive promotion information from the manufacturer computing device with the motivation of providing a source of promotion information.

As per claim 22, Teicher et al discloses:

further comprising a display controller configured to control a plurality of display devices for displaying the retail price, (Col 1, lines 49-51, data processor controls display).

As per claim 23, Teicher et al discloses:

further comprising at least one display device for displaying the retail price communicated from the display controller, (col. 1, lines 49-51, electronic displays).

As per claim 24, Teicher et al discloses:

further comprising a look-up table generated by the sales controller for indicating the retail price to be displayed by the at least one display device, (col. 4, lines 22-27, list of price reductions).

As per claim 25, Teicher et al discloses:

wherein the sales device comprises a point-of-sale (POS) device that accesses the look-up table to determine the retail price to charge, (Col. 4, lines 22-27, POS unit).

As per claim 27, Teicher et al discloses:

wherein the promotion schedule is stored in a table, (col. 4, lines 22-27, list of price reductions).

As per claim 30, neither Teicher et al nor Failing, Jr. et al disclose wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in time basis. However, in [0045], Werner discloses that where feature is encrypted, system may decrypt feature using an associated authorization key, or transfer the authorization key with feature 44 to a data presentation unit for decryption, and that the system may perform such processing before the scheduled presentation or on-the-fly as data is transferred to a data presentation unit. Werner discloses this limitation in an analogous art for the purpose of showing that data can be decrypted during a specific time frame.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in time basis with the

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motivation of not decrypting encrypted scheduling data based on promotion all at once, but during a specific frame.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US 20030130883 A1	SCHROEDER et al	7-2003
US 20020069107 A1	WERNER	6-2002
US 5933813	TEICHER	8-1999
US 5448226	FAILING et al	9-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims. A New Grounds of Rejection are cited below for claims 21-25, 27 and 30:

DETAILED ACTION***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

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patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 16, 31-33, 19-20, 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1).

As per claims 1, 31, Schroeder discloses:

the manufacturer computing device providing promotion information to be considered in developing the promotion and price computation model/receiving promotion information..., ([0056], shows web interface allowing access to manufacturer computing device databases to provide alternate promotions));

the retailer computing device providing price determination parameters to develop the promotion and price computation model/receiving price determination parameters..., ([0070], shows that a combination of conditions (sales price discount, etc.) can be input by retailer computing device to achieve targets and provide solution); and

developing in the controller that the promotion and price computation model from the promotion information provided by the manufacturer computing device and the price determination parameters provided by the retailer computing device to implement a promotion/developing the promotion and price computation model from the received promotion information..., ([0006], sales lift model, [0067], shows implementing

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promotions, w/ [0094], autoregressive models are based on price promotions, and [0069], shows the price offered by the manufacturer computing device in the database depends on the specific retailer computing device, incorporating existing contractual arrangements regarding pricing);

calculating in the controller a retail price based on information provided by the promotion and price computation model, (clm 25 of Schroeder shows providing a computerized sales lift model; providing a base volume estimate for the product as input for use with the computerized sales lift model; identifying a plurality of proposed promotions for the product, wherein retail price information for the product is specified for each promotion); and

Schroeder does not specifically disclose auditing of improperly implemented promotions, however, does disclose future auditing in [0110]. Here, administrators may modify database contents, enter administrative information to document changes for purposes of future auditing in the business planner system, and also in [0042], discloses support vector regression that allows the user to minimize the risk of the prediction to achieve a specified acceptable level of error.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some

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products, thereby suggesting that it is common to audit for errors. It therefore would be obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented promotions with the motivation of determining if and when products are taken on/off promotions.

Neither Schroeder et al nor Failing, Jr. et al disclose wherein the promotion information includes a schedule that is encrypted/based on the schedule of the promotion information, wherein the retailer computing device decrypts the schedule received from the manufacturer computing device on a segment-by-segment basis such that only information from a current segment is decrypted. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Werner discloses this limitation in an analogous art for the purpose of showing that phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion information includes a schedule that is encrypted/based on the schedule of the promotion information, wherein the

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retailer computing device decrypts the schedule received from the manufacturer computing device on a segment-by-segment basis such that only information from a current segment is decrypted with the motivation of not decrypting encrypted scheduling data all at once.

As per claims 2, 32, Schroeder discloses:

calculating a retail price based on information provided by the promotion and price computation model developed, ([0006], predicting sales).

As per claims 3, 10, 33, Schroeder discloses:

updating the retail price based upon additional information provided by the retailer computing device/ updating the retail price based upon additional information provided by the retailer computing device/ receiving updated promotion.../updating the retail price..., ([0083], change in price).

As per claim 4, Schroeder discloses:

wherein the additional information comprises additional promotion information provided by the manufacturer computing device, ([0072], additional/extended promotion).

As per claims 5, 33, Schroeder discloses:

wherein the additional information comprises additional price determination parameters provided by the retailer computing device, ([0029], cost of retailer computing device fees).

As per claims 6-8, Schroeder discloses:

wherein the step of updating comprises performing real-time updates of the retail price based upon the additional information, wherein the additional information comprises information received at the controller on a real-time basis/wherein the information received on a real-time basis comprises real-time promotion information received from the manufacturer computing device/wherein the information received on a real-time basis comprises real-time price determination parameters received from the retailer computing device, ([0075], shows transactions can be handled via real-time authorization).

As per claim 9, Schroeder discloses:

displaying the retail price on a retail display device, ([0106], retailer computing device information displayed).

As per claim 16, Schroeder discloses:

wherein the promotion schedule is stored in a table, ([0077], manufacturer computing device view).

As per claims 44, 46 Schroeder does not specifically disclose the following, however Failing, Jr. et al discloses, that audit reports may be automatic or manual. Remote audits, such as from corporate headquarters, may be conducted through the communications means already in place to provide price change information in col. 3, lines 42-46.

It therefore would be obvious to combine the teaching of Schroeder and Failing, Jr. et al to disclose further comprising the retailer computing device bypassing the promotion and price computation model and manually setting the retail price/further comprising the

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retailer computing device

bypassing tile promotion mid price computation model and manually setting the retail price.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose the above limitation with the motivation of optionally using manual intervention to set retail prices.

As per claims 19-20, 42-43, neither Schroeder et al nor Failing, Jr. et al disclose wherein the decryption on a segment-by-segment basis occurs according to a segment selected from the group consisting of: a time segment, a date segment, and *a promotion type segment*/wherein the decryption occurs by way of decryption keys for each segment that are passed to the retailer computing device on a just-in-time basis. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Also, specifically in [0045], Werner discloses that where feature is encrypted, system may decrypt feature using an associated authorization key, or transfer the authorization key with feature 44 to a data presentation unit for decryption, and that the system may perform such processing before the scheduled presentation or on-the-fly as data is transferred to a data presentation unit. Werner discloses these limitations in an analogous art for the purpose of showing that

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phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data, and that data can be decrypted during a specific time frame.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the decryption on a segment-by-segment basis occurs according to a segment selected from the group consisting of:

a time segment, a date segment, and a promotion type segment/wherein the decryption occurs by way of decryption keys for each segment that are passed to the retailer computing device on a just-in-time basis with the motivation of not decrypting encrypted scheduling data based on promotion all at once, but during a specific frame.

As per claim 45, Schroeder discloses:

wherein the system determines whether a promotion has been improperly implemented on the basis of a contract violation, ([0042], shows support vector regression, a recent development in regression practice, allows the user to minimize the risk of the prediction to achieve a specified acceptable level of error).

Claims 11-14, 34-37, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1), and further in view of Teicher et al (US 5,933,813), as cited by applicant.

As per claim 11, neither Schroeder et al nor Failing, Jr. et al nor Werner disclose the following, but does disclose updating the retail price through a display in [0106].

However, Teicher et al discloses:

wherein the step of updating is performed automatically in response to either additional promotion information provided by the manufacturer computing device or additional price determination parameters provided by the retailer computing device, (Col. 9, lines 58-69, "updated prices" command received automatically). Teicher et al discloses this limitation in an analogous art for the purpose of initiating a simultaneous, global change in the contents of the display.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to perform updating automatically with the motivation of updating without physical interaction.

As per claim 12, Schroeder et al discloses:

wherein the step of automatically updating is performed on a real-time basis, ([0075], shows transactions can be handled via real-time authorization).

As per claim 13, neither Schroeder et al nor Failing et al nor Werner disclose the following, but does disclose updating the retail price through a display in [0106].

However, Teicher et al discloses:

wherein the automatically updated retail price is passed to a look up table accessible to display devices and point-of-sale devices, (col. 4, lines 6-27, list of price reductions). Teicher et al discloses this limitation in an analogous art for the purpose of showing that price reductions are listed as a source for updating the current price.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to automatically update the retail price according to a look-up table with the motivation of accessing a source to get current prices.

As per claims 14, 34, neither Schroeder et al, Failing et al, nor Werner nor Teicher et al disclose the following, but Schroeder et al does disclose updating the retail price through a display in [0106].

Therefore, the following is obvious with the Schroeder et al/Failing et al/Werner/Teicher et al combination since updates are stored at the computer in Schroeder:

wherein the automatically updated retail price is passed directly to display devices and point-of-sale devices/ further comprising the step of: providing the updated price to a display controller and a sales controller.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the automatically updated retail price to be passed directly to a display device and point-of-sale devices with the motivation of using stored data to update prices.

As per claim 35, Schroeder et al discloses:

wherein the steps of updating and providing are performed on an as-needed basis, ([0102], as-needed).

As per claim 36, Schroeder et al discloses:

wherein the steps of updating and providing are performed upon request.
([0066], request for the modification of sales plans)

As per claim 37, Schroeder et al discloses:
wherein the steps of updating and providing are performed on a real-time basis, ([0075], real-time).

As per claim 39, Schroeder et al discloses:
wherein the promotion schedule is stored in a table, ([0077], manufacturer computing device view).

NEW GROUND(S) OF REJECTION

Claims 21-25, 27, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (US 5,933,813), as cited by applicant, and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1), and further in view of Schroeder et al (US 2003/0130883 A1).

As per claim 21, Teicher et al discloses:

A sales controller in communication with a retailer computing device and a manufacturer computing device, (col. 5, lines 34-54, sales controller represented by the POS bar code reader);

a sales device in communication with the retailer computing device and the sales controller, (col. 5, lines 34-54, sales device represented by the POS unit);

wherein the sales controller is configured to receive price determination parameters from the retailer computing device to calculate a retail price and implement

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a promotion, /and wherein the sales device is configured to receive the retail price from the sales controller (col. 5, lines 34-54, calculates new price, [0069], shows the price offered by the manufacturer computing device in the database depends on the specific retailer computing device, incorporating existing contractual arrangements regarding pricing);

Teicher et al does not specifically disclose implementing a promotion or wherein the sales controller is configured to audit improperly implemented promotions and send audit reports to the manufacturer computing device, however does disclose determining and displaying sales promotion prices in col. 1, lines 36-51, which suggests ultimately implementing promotions.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors. It therefore would be obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented promotions with the motivation of determining if and when products are taken on/off promotions.

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Neither Teicher et al nor Failing, Jr. et al disclose wherein the promotion information includes a promotion schedule that is encrypted at the manufacturer computing device, and the sales controller decrypts the promotion schedule on a segment-by-segment basis such that only information from a current segment is decrypted. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Werner discloses this limitation in an analogous art for the purpose of showing that phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion information includes a promotion schedule that is encrypted at the manufacturer computing device, and the sales controller decrypts the promotion schedule on a segment-by-segment basis such that only information from a current segment is decrypted with the motivation of not decrypting encrypted scheduling data all at once.

Neither Teicher et al, nor Failing, Jr. et al nor Werner disclose wherein the sales controller is configured to receive promotion information from the manufacturer computing device, however, Schroeder et al discloses in [0056], a web interface

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allowing access to manufacturer computing device databases to provide alternate promotions.

It therefore would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the sales controller is configured to receive promotion information from the manufacturer computing device with the motivation of providing a source of promotion information.

As per claim 22, Teicher et al discloses:

further comprising a display controller configured to control a plurality of display devices for displaying the retail price, (Col 1, lines 49-51, data processor controls display).

As per claim 23, Teicher et al discloses:

further comprising at least one display device for displaying the retail price communicated from the display controller, (col. 1, lines 49-51, electronic displays).

As per claim 24, Teicher et al discloses:

further comprising a look-up table generated by the sales controller for indicating the retail price to be displayed by the at least one display device, (col. 4, lines 22-27, list of price reductions).

As per claim 25, Teicher et al discloses:

wherein the sales device comprises a point-of-sale (POS) device that accesses the look-up table to determine the retail price to charge, (Col. 4, lines 22-27, POS unit).

As per claim 27, Teicher et al discloses:

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wherein the promotion schedule is stored in a table, (col. 4, lines 22-27, list of price reductions).

As per claim 30, neither Teicher et al nor Failing, Jr. et al disclose wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in time basis. However, in [0045], Werner discloses that where feature is encrypted, system may decrypt feature using an associated authorization key, or transfer the authorization key with feature 44 to a data presentation unit for decryption, and that the system may perform such processing before the scheduled presentation or on-the-fly as data is transferred to a data presentation unit. Werner discloses this limitation in an analogous art for the purpose of showing that data can be decrypted during a specific time frame.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in time basis with the motivation of not decrypting encrypted scheduling data based on promotion all at once, but during a specific frame.

(10) Response to Argument

Appellant argues that Independent claims 1 and 31 are distinguishable because the applied art fails to disclose or suggest the calculation of a "retail price". Appellant

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specifically argues that while *Schroeder* does disclose the calculation of a unit price, the determination of sales, and prediction of costs incurred by the retailer in executing the promotion, these actions or determinations in no way suggests that a retail price is calculated to predict the retailer's profit, however, based on the disclosure of *Schroeder*, the "retail price" is already known and/or provided to the computation model so that the success of the promotion can be predicted, and not calculated from the promotion information and a price computation model as is recited in independent claims 1 and 31. However, as shown in the rejection, clm 25 of *Schroeder* shows "providing a computerized sales lift model; providing a base volume estimate for the product as input for use with the computerized sales lift model; identifying a plurality of proposed promotions for the product, wherein retail price information for the product is specified for each promotion". *In this case, retail price information for the product is calculated as a result of promotion and sales lift, which includes price as shown in claim 32 of Schroeder*, where it is shown that the model of sales lift of the product capable of predicting the effect on consumer sales of a plurality of promotion types as modeled as function of at least the change in effective price to the consumer due to the promotion. *Schroeder* therefore discloses the "retail price" of the present invention.

Dependent claims 3-10, 16, 19, 20, 32, 33 and 42-45 depend from claims 1 and 31, and are still rejected for the same reasons as discussed above with respect to claims 1 and 31.

As per claims 21-25, 27 and 30, appellant also argues that prior art does not disclose that the sales price of a good is calculated based on "promotion information received from a manufacturer computing device and price determination parameters from a retailer computing device". However, as now disclosed above in the rejection, the Schroeder et al reference, which was already used to disclose a similar feature in claim 1, and added to the rejection of claim 21 for consistency purposes discloses in [0056], a web interface allowing access to manufacturer computing device databases to provide alternate promotions. In this case, Schroeder et al teaches that the sales price of a good is calculated based on this promotion information since a promotion occurs as a result of implementation of promotion information, which occurs during a certain time, and [0030] of Schroeder discloses that "As used herein, "promotion time period" refers to the time that a promotion is in effect to the consumer. During this period some type of pricing discount, new or increased consumer incentive, or merchandising activity must exist to generate incremental consumer demand for the product". In this case, examiner interprets the discount of Schroeder et al as the sales price of the present invention.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Akiba K Robinson-Boyce/

Primary Examiner, Art Unit 3628

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Director, TC 3600

/IGOR BORISSOV/

Primary Examiner, Art Unit 3628

Conferees:

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